

EXHIBIT A(PART 2)

1 A. It can be. I do not consider it usual as a
2 safety issue.

3 Q. In what respects do you mean that it can
4 be?

5 A. If the discrimination rose to the level of
6 threats, then it could be a safety issue.

7 Q. Earlier Lily was talking to you about the
8 term "zero tolerance," and you agreed -- I believe
9 you said you agreed that WGI had a zero tolerance
10 policy relative to racial discrimination; is that
11 correct?

12 A. Yes.

13 Q. And can you tell me -- I apologize if you
14 said this before -- can you tell me, in your own
15 words, what that means.

16 A. Zero tolerance would mean that any
17 violation of the policy would require corrective
18 action.

19 Q. Does that mean that in the instance of a
20 racial discriminatory type conduct, someone might
21 not be terminated for such conduct?

22 A. There's a possibility for that.

23 Q. Was anyone at the Mystic site, meaning any
24 employees of WGI, taught by the company or by an

1 outside vendor how to investigate a complaint of
2 racial discrimination?

3 A. I'm not aware of anyone who was
4 specifically trained. I'm not aware of anyone's
5 specific training to that effect.

6 Q. Are you aware if any employees at the
7 Mystic site were taught whom to report a complaint
8 of racial discrimination to?

9 A. Does your word "taught" mean informed?

10 Q. Sure.

11 A. It was my expectation and my belief that
12 policies were posted at the site that described the
13 manner of reporting any kind of untoward activity,
14 including discrimination.

15 Q. Why do you -- what do you base that belief
16 on that you just testified about?

17 A. I base that on copies of those policies
18 that were provided during the course of some of the
19 responses to the position statements.

20 Q. And you said earlier that, still to this
21 date, you have never been to the Mystic site in
22 Everett, Massachusetts; is that correct?

23 A. That is correct.

24 Q. Were you aware if any employees of WGI from

1 foremen up were ever informed or taught in any type
2 of educational setting, such as a course or a
3 seminar, how to respond to a complaint of racial
4 discrimination at the work site?

5 A. The one instance of informing individuals
6 about that were those series of tool box meetings
7 that I believe were documented in position
8 statements, et cetera. As to whether or not they
9 had formal courses other than that, I'm unaware of
10 those.

11 Q. Would you agree with me that the tool box
12 meetings that you were referring to occurred only
13 after complaints of racial graffiti were brought to
14 the attention of WGI?

15 MR. PATERNITI: Objection. Go ahead.

16 Q. The tool box meetings that we've talked
17 about earlier that are set forth in I believe it was
18 one of the documents you looked at, but they were
19 the subject of racial graffiti, would you agree that
20 the tool box meeting you just referred to occurred
21 only after WGI was made aware of some type of racial
22 discriminatory conduct or action?

23 A. My observation of those facts leads me to
24 believe that that was the chronology of that, but I

1 expected that the appearance of the policies that
2 would otherwise describe those avenues and
3 expectations were already at the site.

4 Q. What would be your understanding if a
5 foreman or a general foreman -- let's start with a
6 foreman. What would be your understanding and
7 expectation if a foreman was made aware that there
8 was an incident of racial discrimination at the
9 Mystic work site?

10 A. To fix it or report it.

11 Q. Okay. So let's start with the first of
12 those two things, which is fix it. What would you
13 expect a foreman to do to fix that type of
14 situation?

15 A. To require stopping the offending behavior.

16 Q. By doing what?

17 A. Directing the individual, counseling them,
18 cautioning them relative to expectations.

19 Q. When you say "counseling them," what would
20 be your expectation as far as what a foreman should
21 do specifically to counsel a person who was reported
22 to have committed some type of racially
23 discriminatory conduct at the Mystic work site?

24 A. Could you repeat that.

1 Q. Sure. I'm basically asking you,
2 specifically what do you mean, break down the word
3 "counseling," when you said you would expect a
4 foreman in part, at least, to counsel the offender
5 as to, I guess, potentially what would be prohibited
6 conduct and what would be expected for them in the
7 future? Is that correct?

8 A. I believe that's correct. I believe I
9 understand your question that counsel would be, if
10 you will, the entry level approach to an issue,
11 presuming it was not gross misconduct, that an
12 individual, by informing them of the expectations,
13 would be willing to comply and move quickly to the
14 solution.

15 Obviously, counseling is not ample for some
16 situations, when the individual is not compliant to
17 the policy, and stepping up that to up to and
18 including punitive action and termination for a
19 individual who was unresponsive.

20 Q. If the WGI foreman at the Mystic work site
21 never underwent any type of courses, training or
22 seminar as far as how to deal with a complaint of
23 racial discrimination, how would you expect them to
24 know specifically what to say to an offender or how

1 to counsel an offender?

2 A. And that's why I said "report it."
3 Individuals who don't understand exactly the quick
4 solution set, such as an acknowledged case of
5 misbehavior that the supervisor would know was -- we
6 would presume to know and have a value system that
7 would say this is not an acceptable behavior, that
8 they would describe correct behaviors to the
9 individual -- absent that, we would expect them to
10 report it, to those individuals who indeed, if you
11 will, had investigation training or insight, and
12 those other individuals, relative to the topic.

13 Q. To whom would you expect a foreman who had
14 been made aware of a racially discriminatory
15 conduct -- should that foreman report the conduct
16 to?

17 A. General expectation as is described in our
18 complaint procedure, that that individual report it
19 up through the hierarchy of their reporting
20 structure.

21 Q. So a foreman should report -- you would
22 expect -- strike that. You would expect that a
23 foreman who had been made aware of racially
24 discriminatory conduct by an employee, or maybe the

1 foreman witnessed it, you would expect that foreman
2 to report it to whom, specifically?

3 A. The complaint procedure and our expectation
4 for that individual would include reporting it to
5 any of the avenues above that individual, which
6 might be their immediate supervisor all the way up
7 to vice-presidents in the company.

8 Q. Okay. So it would be your expectation that
9 a foreman could report an incident of racial
10 discrimination to his or her general foreman,
11 correct?

12 A. That would be an acceptable practice, yes.

13 Q. Okay. And then the general foreman who got
14 the complaint from the foreman should report it to
15 whom?

16 A. If they -- is the general foreman a
17 Washington Group employee?

18 Q. Yes.

19 A. Then I would prefer -- the most effective
20 channel is to report it to the EEO site
21 representative.

22 Q. And the Mystic EEO site representative for
23 2000 to 2002 was whom?

24 A. Warren Anderson.

1 Q. And what about if a superintendent was made
2 aware of or witnessed some type of racially
3 discriminatory conduct; to whom should he or she
4 report that?

5 A. All of the above -- all of the options are
6 available to that individual in their reporting
7 hierarchy, and we believe one of the more efficient
8 methods is to report it to the site EEO manager.

9 Q. Now, let me ask you this: What if a
10 superintendent -- strike that. Are you aware that
11 at a site such as the size of Mystic, there are
12 different superintendents for different sides and
13 different areas of the project?

14 A. I am generally familiar with that concept,
15 yes.

16 Q. So, for example, like the boilermakers,
17 they had a day shift and a night shift, and then on
18 each particular shift they had different
19 superintendents, because the project was so large,
20 covering different areas of the project. Are you
21 familiar with that concept?

22 A. Yes.

23 Q. So what would be your expectation if a
24 superintendent -- superintendent, WGI employee -- on

1 one side of the project somehow became aware of a
2 racially discriminatory action or conduct that
3 occurred on the other side of the project where
4 there's another superintendent on that side of the
5 project, but for some reason the superintendent who
6 was not in charge of that side of the project
7 happened to have heard about it?

8 What would you expect the superintendent
9 that found out about the racially discriminatory
10 conduct to do about it?

11 A. I would expect any supervisor to accept the
12 responsibility for affecting those conditions and
13 reporting them as necessary.

14 Q. Reporting them to whom, if you're a
15 superintendent?

16 A. Through the reporting process described in
17 our complaint procedure, which opens up all those
18 avenues of the hierarchy of their reporting
19 relationship, as well as to 1-800 numbers, et
20 cetera.

21 Q. Now, are you aware of any specific training
22 or courses that related to superintendents that made
23 them aware of the reporting hierarchy at the Mystic
24 site?

1 A. I was not aware of any training sessions,
2 other than informationals available on the posted
3 policies.

4 Q. And would the posted policies have
5 addressed a situation such as the one that we just
6 talked about, whereby a superintendent on one side
7 of the project, even though it was not his side of
8 the project, if he was aware of a racially
9 discriminatory action or conduct, that he should
10 still report it to either Warren Anderson or to
11 perhaps his immediate supervisor or perhaps even to
12 the superintendent on whose side of the project it
13 was?

14 A. I believe the language is clear in the
15 expectation that that responsibility is to be
16 accepted by that individual.

17 Q. Would you agree with me that it would be a
18 better practice for WGI to have had a meeting with
19 the employees, especially the supervisory employees,
20 to inform them about how to investigate and/or how
21 to report a discriminatory action?

22 A. I believe in your question you're implying
23 that it didn't happen. I feel -- it was my
24 impression that certain instructions along those

1 lines did occur. But, yes, that someone should be
2 informed, particularly if there is an incident, and
3 those concerned parties to be -- their level of
4 awareness heightened regarding expectations if in
5 fact they had missed the mark on that issue.

6 Q. I appreciate what you said. I guess I'll
7 ask it a different way.

8 Would you agree with me that it would have
9 been a better practice for WGI, instead of just
10 posting the policy that dealt with EEO issues and
11 reporting an action of discriminatory conduct, would
12 you agree that it would have been a better policy to
13 have a training seminar or some type of training
14 course to inform the supervisory personnel how to
15 deal with a report of racial discrimination?

16 A. I believe training can be effective in
17 delivering that message, yes.

18 Q. So would you agree with me that that would
19 have been a better policy, the training avenue of
20 policy, meaning the actual -- strike that.

21 So would you agree with me that training
22 with a live person or maybe with a video would have
23 been a better policy as far as how to deal with a
24 complaint of racially discriminatory conduct than

1 the policy that was in place, which is a posting of
2 the information at the Mystic site?

3 MR. PATERNITI: Objection. Go ahead.

4 A. In theory, yes.

5 Q. Okay. Thanks. Prior to, I believe you
6 said it was August of 2002, is it fair to say that
7 you never heard of any complaints of racial
8 discriminatory conduct or any type of racial
9 graffiti whatsoever at the Mystic site?

10 A. That is my memory of events at this time,
11 yes.

12 Q. Have you ever heard of a gentleman named
13 Claude Barker?

14 A. His name was a part of some of the events
15 described in the issues brought forth by some of the
16 complainants, yes.

17 Q. Do you recall ever having spoken with him?

18 A. I did not.

19 Q. If an employee at the Mystic site, for
20 example, told a racially discriminatory joke, what
21 would be the appropriate discipline against that
22 employee, if anything?

23 A. To prohibit the practice. Each instance
24 would be measured for what it was, the content,

1 context, what happened, and to determine if it rose
2 to the level of gross misconduct -- and some of that
3 very easily could -- which could result in
4 termination of the individual.

5 Q. Have you ever heard of a gentleman named
6 Roy Finch?

7 A. It's not a name that seems familiar right
8 now.

9 Q. Would you agree that if a person told a
10 racially discriminatory joke at the Mystic site, at
11 the very least some type of corrective action should
12 have been taken?

13 A. Yes.

14 Q. Let me give you an example of a joke
15 that -- and I'll get your opinion as to what, if
16 anything, in your opinion, should have been done
17 about it.

18 So what if two white employees were talking
19 in front of a black employee at the Mystic site, and
20 one of them said, "Is your wife a nagger?", and then
21 the other white employee said, "No, she's white"?

22 First of all, would you, in your opinion,
23 would you take that to be a racially discriminatory
24 joke?

1 A. Yes.

2 Q. If that incident had been reported to you,
3 or if you were on the site and heard it, in your
4 opinion, using that scenario, what would be
5 appropriate corrective action?

6 A. With only those facts to assess, probably
7 severe counseling and three to five days off.

8 Q. What do you mean by "severe counseling"?

9 A. Description of expectations, and with the
10 mention of impending termination for any failure --
11 for any such infraction or any kind of related
12 infraction in the future.

13 Q. When you say "three to five days off,"
14 would that be without pay?

15 A. Yes.

16 Q. In your opinion, would that joke that I
17 just stated to you, would that also warrant some
18 type of documentation in that person's personnel
19 file?

20 A. Certainly an investigative file, yes.

21 Q. What type of information would have gone in
22 an investigative file, in that situation?

23 A. A description of the incident.

24 Q. Where would investigative files have been

1 kept for employees at the Mystic site?

2 A. The expectation is that the EEO person
3 would conduct some sort of investigation, if they
4 knew about it, and would prepare a file that would
5 not be part of the personnel file, but would be an
6 investigative internal EEO file.

7 Q. Are you aware of any investigative files
8 that exist relative to any of the names of any of
9 the employees that you've seen in any of the
10 position statements?

11 A. There are some records associated with
12 discussions and conversations. For example, the
13 Kenny Carpenter interrogation by Warren Anderson, et
14 cetera, is an example. And there may be others.

15 Q. Now, let me ask you this: What about a
16 scenario whereby a white employee came into a
17 trailer, and there were other employees, including
18 black employees, and the white employee used the
19 word "nigger" in front of the other employees?

20 First of all, it may be an obvious
21 question, but would you agree that that is conduct
22 that would be constituted as racially discriminatory
23 in nature?

24 A. Yes.

1 Q. So, in your opinion, what, if any,
2 corrective action should have been taken towards the
3 white employee that used the word "nigger,"
4 particularly in front of black employees?

5 A. In your example, I impose what I believe to
6 be another fact, and that is that this was also a
7 supervisor, he had some supervisory role?

8 Q. I appreciate what you're saying. For the
9 time being, let's assume it was a craft worker, a
10 white craft worker who used the word "nigger."
11 Let's assume they weren't a supervisory person for
12 now, but they used it in the presence of black
13 workers.

14 A. And in reference to people specifically?

15 Q. Well, let's just say specifically the
16 person said, "I'm tired of all this nigger shit."

17 So obviously we've determined or
18 established that that is racially discriminatory in
19 nature. My question to you, as an EEO professional,
20 what type of correction -- corrective action or
21 punitive action should have been taken towards this
22 white employee who said this?

23 A. Theoretically --

24 Q. Well, I'm asking your opinion.

1 A. My opinion would be that that sounds like
2 an offense that ordinarily I would have voted for an
3 exit of the employee. Under perhaps more
4 extenuating circumstances and so forth, a true
5 repentant attitude on the part of a person and a
6 large amounts of apologies, et cetera, we might have
7 considered retaining him.

8 Q. Let's assume they apologized and -- well,
9 strike that. Let's assume they apologized. In your
10 opinion, should that person still have been
11 counseled or suspended or any other type of
12 sanctions taken against the person that used the
13 word "nigger" in the context that we've just talked
14 about?

15 A. My normal practice would be to do that,
16 yes.

17 Q. What specifically in this situation would
18 you have done?

19 A. This is hindsight. Had they presented
20 those facts on the day of, you know, consistent with
21 a specific investigation, I would have voted for an
22 exit of the employee, because of the very egregious
23 nature. But if the person wasn't, then severe
24 counseling, and again, I would -- I believe

1 Q. Is it from the paperwork and from this
2 lawsuit, or do you have independent knowledge of who
3 Ron Bennett is?

4 A. From the paperwork.

5 Q. So to your knowledge you have not knowingly
6 ever talked to Ron Bennett?

7 A. That's correct.

8 Q. Did you read his deposition transcript that
9 you recall?

10 A. I can't recall any content.

11 Q. Do you know a gentleman by the name of
12 Charles Belangia?

13 A. Only from seeing the name in the paperwork.

14 Q. Do you knowingly -- do you have a
15 recollection of knowingly talking to Charlie
16 Belangia about any of the circumstances involved in
17 this lawsuit?

18 A. No.

19 Q. Do you recall reading Mr. Belangia's
20 deposition transcript?

21 A. I do not.

22 Q. At the Mystic site was there a handbook
23 containing EEO policies that were distributed to all
24 employees at the site?

1 A. I'm not aware of a handbook, but the
2 possibility -- I'm not aware of a specific practice
3 of the distribution, but it is commonly accepted
4 that individuals would receive information relating
5 to our policies upon arriving at the site.

6 Q. That's actually what I meant to ask you.
7 Are you aware of any EEO policies on the part of WGI
8 that were distributed to all employees at the Mystic
9 site? Do you have a specific recollection of that
10 or specific knowledge of that?

11 A. Not specific knowledge.

12 Q. When you say that it's your belief that
13 those policies would have been distributed to
14 employees, what do you base that belief on?

15 A. That the policies are to be distributed and
16 made known to individuals, and if the policies are
17 not handed out, that instructions regarding
18 accessing those policies in their appropriately
19 posted locations should be given to them.

20 Q. Would it be fair to say that it is the WGI
21 policy to hand out its EEO policies, but you have no
22 independent knowledge of whether that was actually
23 done at the Mystic site?

24 A. I think that might be an overstatement as

1 regards the policy. I don't believe you will find a
2 written policy that it will be handed out. It is an
3 expectation, a practice that we believe should be
4 used in the company and know that it does happen in
5 many cases, but I do not know that it happened
6 specifically at Sithe Mystic.

7 Q. Is there any type of confirmation or
8 documentation sent in by the EEO person on site,
9 such as the one at Mystic, that is communicated to
10 you to inform you or anyone else in HR to let them
11 or you know that the EEO policies were distributed
12 to the WGI employees at the Mystic site?

13 A. There is not a repetitive practice to do
14 that.

15 Q. Are you aware of anything in this case
16 whereby the EEO person on site at Mystic
17 communicated to you in any respect that EEO policies
18 were distributed to WGI employees at the Mystic
19 site?

20 A. There is information in some of the
21 documentation relative to meetings that included but
22 not exclusive of the tool box meetings that
23 additional discussions were had about those
24 policies.

1 Q. Would you agree that it would be your
2 expectation that EEO policies would have been
3 distributed, which in part would have outlined the
4 zero tolerance policy of WGI -- would it be your
5 expectation that those policies would have been
6 distributed to all WGI employees at the Mystic site
7 upon their arrival at that site?

8 A. That is a preferred practice.

9 Q. Is there any -- strike that. Do you have
10 any information that can confirm that, at the Mystic
11 site, WGI employees were given EEO policies upon
12 their arrival at that site?

13 A. I don't have specific information to
14 confirm that.

15 Q. If that were done by WGI, who in the
16 company would have that information that would
17 confirm whether the policies were distributed to the
18 WGI employees upon the employees' arrival at the
19 site?

20 A. Individuals who were the receivers of
21 employees and who would have organized that
22 information transaction with newly arriving
23 employees would be the ones to inquire of that
24 and/or estimate whether or not they had files to

1 support it.

2 Q. So specifically in this case, talking about
3 the Mystic site, give me the name or names of all
4 persons who would have knowledge of whether the EEO
5 policies were distributed to WGI employees upon the
6 employees' arrival at the site.

7 A. I don't know.

8 Q. Are you aware of -- well, strike that. Is
9 WGI a publicly traded company, if you're aware?

10 A. Yes, it is.

11 Q. Is it on one of the exchanges?

12 A. Yes.

13 Q. Which exchange?

14 A. I'm not sure.

15 Q. Do you own stock in the company?

16 A. I do not.

17 Q. As part of your employment, are you offered
18 stock options?

19 A. No.

20 Q. I believe earlier when you were talking to
21 Lily, you referred to the term "on-site management."
22 Do you recall talking to her about that at the
23 Mystic site? I wrote it down in my notes, and I
24 have a question to ask you: Who did you mean by

1 "on-site management" for HR purposes at the Mystic
2 site?

3 A. For HR purposes --

4 MR. PATERNITI: Objection. Go ahead.

5 A. -- it's vague, I believe, in the way I'm
6 understanding this, but that would include anyone in
7 upper management in particular, such as the lead for
8 EEO and HR or the project manager or the project
9 manager's direct reports.

10 Q. Who were the persons at the Mystic site who
11 were ultimately responsible for making certain that
12 graffiti of a racial nature was either eliminated or
13 otherwise controlled at the Mystic site?

14 A. I would consider every employee at the site
15 responsible for that, but especially, of course,
16 anyone in management. And as it goes up the chain
17 to higher management, the responsibility, if you
18 will, increases for our expectation of that.

19 Q. So is it fair to say that you would expect,
20 at least from the management perspective, everyone
21 from a foreman up to be responsible to participate
22 in the eradication of racially discriminatory
23 graffiti?

24 MR. PATERNITI: Objection.

1 A. Yes.

2 Q. Are you aware of any specific person or
3 persons that allegedly participated in drawing any
4 of the racist graffiti at the Mystic site?

5 A. No.

6 Q. So at the Mystic site, was there a
7 permanent EEO officer there?

8 A. That would have been the role of Mr.
9 Anderson.

10 Q. So he was on site -- is it your
11 understanding he was on site the entire time the
12 project was going on at Mystic and his job was the
13 EEO officer?

14 A. The job was interrupted at one time, and
15 I've forgotten how much time occurred between the
16 leaving of the site and the return to the site. But
17 my involvement with the site pictured Mr. Anderson
18 as consistently the person with that responsibility.

19 Q. Your office is in Birmingham, Alabama,
20 right?

21 A. Yes.

22 Q. Is that a permanent office?

23 A. Yes.

24 Q. Meaning you don't travel around -- I mean,

1 you travel around, but you don't go for like a month
2 or two at a time at a different office. You
3 basically stay in Birmingham. That's your main
4 office. You may travel to different sites for
5 different reasons; is that right?

6 A. That's an accurate description, yes.

7 Q. Now, Mr. Anderson, does he have a permanent
8 office, sort of like what you have?

9 A. I believe -- I know that Mr. Anderson is
10 now housed in Denver, if he's not on a site. Of
11 course, site assignments in the case of his job
12 description could be very lengthy, and whether or
13 not someone would necessarily maintain that office
14 at that, if you will, home base condition, I don't
15 know. It's possible they did, it's possible they
16 didn't, depending on space constraints they might
17 have had.

18 Q. Would you say Mystic, the Mystic site, was
19 a fairly big site in relative terms?

20 A. In relative terms I think it's one of our
21 largest, yes.

22 Q. Would the size of the Mystic site have --
23 would it have been the policy of the company to have
24 a permanent EEO officer at the Mystic site due to

1 the size of the site or due to any other factors?
2 In other words, I don't think every site -- you said
3 every site doesn't have an EEO officer; is that
4 correct?

5 A. I did.

6 Q. Are you -- strike that. Did the Mystic
7 site have -- is it your understanding that Mr.
8 Anderson was sort of a permanent EEO officer at the
9 Mystic site, or was there --

10 A. Yes. For the duration of that project.

11 Q. That's what I was trying to find out.
12 Thanks.

13 Do you recall talking about the Complaint
14 Procedure at the Sithe Mystic Station project? It
15 was Exhibit 5 in Mr. Anderson's deposition. Do you
16 still have a copy of that?

17 A. Yes.

18 Q. Pick that up and look at it, please.

19 A. I remember it.

20 Q. Can you tell me who was this given to,
21 distributed to, or where was this posted? If you
22 testified to that already, I apologize. I don't
23 recall that.

24 A. I'm not familiar with the transaction of

1 giving it to someone, how it arrived at the site
2 exactly, how it was generated. I don't have a
3 specific fact about that.

4 Q. Do you recall when, if at all, it was
5 either published at the Mystic site or -- well,
6 strike that. Do you recall -- are you saying you
7 don't know if it was distributed at the site at all?
8 Is that what you're saying?

9 A. No. I believe later records indicated that
10 it existed at the site. Exactly when it appeared
11 there and was posted, notwithstanding our presence
12 there prior to 2000 and in the bankruptcy and our
13 exit, the prior-to-2000 conditions of doing the job
14 would have been under Raytheon and Raytheon's
15 policies posted.

16 When that exit -- when that changed,
17 perhaps those -- perhaps, perhaps not -- the
18 Raytheon policies came down. There's a possibility
19 that Raytheon policies stayed up during that entire
20 transition and that these policies with the
21 Washington logo may have appeared sometime later.
22 And I don't know what that is.

23 Q. Would you agree with me that there is no
24 way to confirm whether these policies were actually

1 posted at the Mystic site?

2 A. I don't know that, and I wouldn't have that
3 fact, since I didn't visit the site to observe them
4 myself.

5 Q. Would it be accurate to say that these
6 policies may have been posted and they may not have
7 been posted?

8 A. My opinion is the evidence indicates that
9 they were posted as opposed to not posted.

10 Q. Tell me what you mean by that, "the
11 evidence indicates." What do you mean by that?

12 A. When we asked Warren for copies of the
13 posters, et cetera, for purposes, if for nothing
14 else, as exhibits in the presentation of our
15 position statement, they appeared. Now, did he have
16 them on a bulletin board in the proper places? I
17 didn't see them. It is certainly the expectation of
18 the company that they be there.

19 Q. All right. I just -- Mr. McDaniel,
20 referring back to I think it was Exhibits 2 through
21 5, which are the position statements, if you can
22 just take all the time you need, and just get all
23 the paperwork away from there other than those four
24 documents -- there you go. Now, you signed each of

1 A. I can't recall the exact date, but it is
2 very possible that it was after some of the events
3 that were the beginnings of the issues at Sithe
4 Mystic.

5 Q. Was that in 2002, 2003, 2004, to the best
6 of your ability? Was that in the -- you said you
7 first became aware in August of 2002 after first
8 hearing about Mr. Willis's complaints to Mr.
9 Anderson. Was it in 2002 or was it in 2003 or
10 later?

11 A. I don't recall. I can retrieve that
12 information, but perhaps 2003.

13 Q. And if you do retrieve that information, we
14 would appreciate it if you could actually produce
15 it.

16 How is the 800 number advertised to
17 employees?

18 A. Through our Website and our postings of
19 policies.

20 Q. You've spoken about at least what we're
21 calling perhaps a starter EEO kit. Would that be
22 part of that since its implementation?

23 A. I'm sorry, would you ask that question
24 again.

1 documents that he reviewed were all helpful to a
2 certain extent refreshing his recollection. That's
3 the...

4 MR. DESSIN: All right. I'm going to go
5 on. Why don't you think about it.

6 MR. PATERNITI: Let me think about it. We
7 can come back before the end of the day.

8 MR. DESSIN: We'll come back to it.

9 BY MR. DESSIN:

10 Q. All right. You've said, Mr. McDaniel, that
11 you actually do visit some sites when there are EEO
12 matters, correct?

13 A. I do on occasion.

14 Q. Now, how do you decide when, where and how
15 to visit those sites? What criteria do you take
16 into consideration in visiting those sites?

17 A. I believe I answered that relative to Ms.
18 Palacios-Baldwin's questions on that, but it had to
19 do with occasionally top management is implied in
20 it, and in order to keep the matter clean of tainted
21 facts, we try to do an independent investigation.

22 Managers who are accused, whether they are
23 sometimes mid- or upper management, et cetera, more
24 to upper management, sites that do not normally have

1 the level of expertise to attend to those issues, I
2 would do that.

3 If someone is at the site with a level of
4 expertise that I am reasonably comfortable with
5 their engaging that, with or without -- well, in
6 almost all cases, with my observation or oversight
7 or direction, et cetera, then I would ask those
8 individuals to be the on-site people to gather the
9 information.

10 And in some cases, I don't see an added
11 value of me sitting in front of the person to ask
12 them the same questions that someone like Warren
13 Anderson could ask just as effectively, if indeed
14 he's perhaps in some cases been coached by me as to
15 the nature of the questions that should happen.

16 Q. You have stated previously that at some
17 point you did learn that the cleaning was not as
18 effective as you would like it to be.

19 A. I did.

20 Q. And now, when -- how and when did you learn
21 that, did you discover that?

22 A. It's difficult to put a time on that.
23 These cases develop fairly slowly, fact-based or
24 kind of intermittent, hit a little bit here and

1 there.

2 And over the next, you know, three to six
3 months, I guess, and until the pictures that came
4 from the EEOC discovery, I had not seen exactly the
5 context, other than Warren's description of it to me
6 or someone's write-up and their describing
7 conditions, et cetera, some of the written
8 testimony, if you will, from investigations, and so
9 forth.

10 Q. Do you recall when you actually received
11 those pictures from the EEOC, from the discovery
12 provided by the EEOC?

13 A. I think it was fall of 2004.

14 Q. And prior to that, you had not received any
15 pictures?

16 A. Correct.

17 Q. You've stated that there is a weekly report
18 that is actually generated from your office,
19 particularly by you, upward to -- that even gets to
20 the VP, to Mr. Myers, correct?

21 A. There is typically a weekly report. I
22 occasionally miss a weekly report because I'm out
23 traveling or what have you. But it's a typical item
24 that goes to my supervision, and/or to Mr. Myers'

1 secretary, who compiles them into his report.

2 Q. Your supervision, you mean specifically Ms.
3 or Mrs. Large?

4 A. Yes.

5 Q. And then it goes up. Now, is there a
6 weekly report or anything of that nature that goes
7 from the guys on -- the troops on the ground, the
8 general foreman, the foreman, up to you, for example
9 or anybody else?

10 A. Not to me.

11 Q. Do you know if there's a weekly report that
12 goes to anybody else underneath you?

13 A. I'm not aware of a formal approach to that
14 relative to EEO issues necessarily. We expect those
15 to be dealt with one on one when they happen.

16 Q. I'm going to ask you now to take a
17 moment -- I have some pictures, and these are
18 pictures that were actually taken at Sithe Mystic of
19 various graffiti. I would like for you to take a
20 moment and look at them. They are labeled Exhibit
21 No. 9 of the Bennett deposition. I think we'll
22 probably also label them for you.

23 If you can take a quick look and go over --
24 look at each one of them, and then I'm going to ask

1 you questions specifically about some specific
2 numbers. They're also numbered in terms of Bates
3 numbers from discovery which your counsel received
4 from the EEOC.

5 A. (Reviewing photographs)

6 (Discussion off the record)

7 (Recess)

8 BY MR. DESSIN:

9 Q. Mr. McDaniel, have you had an opportunity
10 to review the pictures that I've shown to you which
11 are labeled Exhibit No. 9 of the Bennett deposition?

12 A. I've looked at each of the pages that were
13 handed to me.

14 Q. What I'll do, sir, is rather than go
15 through all of them, what I wanted to do is actually
16 go through some of them, which are -- they are
17 numbered, and specifically, if you could look at
18 Bates No. 2. At the bottom on the right-hand corner
19 it has the number.

20 That was a picture of graffiti taken at the
21 Mystic site, and specifically this one reads,
22 "Encompass Joe Louis, a true nigger." And there are
23 some other things there, correct?

24 A. I see that.

1 Q. Sir, does this violate the EEO policy of
2 WGI?

3 A. Yes.

4 Q. Does it violate any safety policy of WGI?

5 A. I don't see a safety issue.

6 Q. Okay.

7 A. It would have to be taken in context of
8 other facts surrounding it, perhaps, but looking at
9 that one picture, I don't see a safety issue.

10 Q. But without any qualification, you do see
11 that it violates the EEO policy with respect to --
12 which policy with respect to WGI does it violate?

13 A. Primarily anti-harassment.

14 Q. Any specific in terms of what -- is it fair
15 to say racial harassment or racial discrimination?

16 A. Yes.

17 Q. And you have never -- have you seen this
18 picture before, other than today?

19 A. If I did, it would have been in the package
20 that was delivered from the EEOC discovery after
21 suit was filed.

22 Q. All right. Let's look at No. 3, which is
23 the next one. Does that violate any EEO policy of
24 WGI?

1 A. Yes.

2 Q. What specifically, sir? Would it be the
3 same policy, harassment, racial harassment policy?

4 A. At least that.

5 Q. Anything else?

6 A. I think I could categorize that to
7 harassment as including sexually offensive material
8 as well as racially offensive, et cetera, and
9 defacing of company property.

10 Q. Let's look at No. 4, sir. That one says,
11 "Hi, Joe Louis, you brother-fucking nigger." Does
12 that violate any EEO policy of WGI?

13 A. Yes.

14 Q. And those policies were in place at the
15 time -- well, okay. We'll leave it at that.

16 We'll go to Bates No. 485 next. There's a
17 lot of things in there, so I'll point you out to
18 specifically -- there are a lot of graffiti in this,
19 so we'll look at one that starts with "Hey, Godwin,
20 go back to where you came from, ratty cock-sucking
21 piece of shit. We don't want you," right here on
22 the left-hand side.

23 Would that graffiti in that statement
24 violate any of the EEO policies of WGI?

1 A. Yes.

2 Q. Again, you would say again the
3 harassment -- which policy, sir?

4 A. Yes, the harassment policy, and it's
5 just -- all of these are obnoxiously offensive and
6 easily perceived by any normally reacting individual
7 as offensive and against our policies.

8 Q. Let's look at 486, sir. Specifically
9 drawing -- because there are a lot of graffiti on
10 this -- one that says, "Godwin, fat rat," and it
11 above that it says, "This is his least favorite
12 color, white," do you see that as violating any of
13 WGI's EEO policy?

14 A. Yes.

15 Q. What specifically, sir?

16 A. Anti-harassment and generally offensive.

17 Q. And since there are two lines in there, is
18 it the "Godwin, fat rat" that violates, or is it the
19 one that says "his least favorite color, white," or
20 everything in it?

21 A. Everything in it.

22 Q. Next is 47, sir. This is a subsequent
23 picture of what we just read, except there is some
24 additional graffiti in there, specifically the one

1 that says, "Go home, you nigger."

2 Does that graffiti violate the EEO policy
3 of WGI?

4 A. Yes.

5 Q. Would that be also racial harassment,
6 violating that specific provision of the WGI's
7 policy?

8 A. It would include that, yes.

9 Q. Thank you, sir. If you can look at
10 number -- now, jump to 1964, not the year, but the
11 Bates number.

12 Specifically I'll point you to where it
13 says, "Kill all niggers." Do you see that on that,
14 sir?

15 A. Yes.

16 Q. Does that violate WGI's EEO policy?

17 A. Yes.

18 Q. And that, again, would consist of the
19 provision regarding racial harassment and
20 discrimination?

21 A. Yes.

22 Q. The next one is Bates No. 1965. That has a
23 lot of things, but among that it says -- if you
24 start from here, it's "Fat nigger," if you can read

1 that. Would that type of graffiti violate the EEO
2 policy of WGI?

3 A. Yes.

4 Q. And that, again, would be racial harassment
5 and discrimination?

6 A. At least, yes.

7 Q. 1966, sir. There are a lot of things in
8 there. If you can read that, this one says, "Go
9 home, you nigger." Can you make that out? Can you
10 read that, sir?

11 A. (Reviewing document) I think I can make
12 those words out on it.

13 Q. Okay. And as such, would that violate the
14 EEO policy of WGI?

15 A. Yes.

16 Q. Thank you, sir. Let's look at 1967, just a
17 couple -- just a few more. I've got four or five
18 more. 1967, a lot of things in there, but there's a
19 hand pointing to it, what is in black or at least
20 based upon the picture we have, it says, "Tell your
21 two kids watch out. They will pay for your ratty
22 mouth, you dumb nigger," signed "KKK."

23 What is your opinion with respect to that
24 graffiti in connection with the WGI policy?

1 A. Clearly in violation.

2 Q. Is there a safety violation also? When you
3 said "clearly in violation," again I'm thinking
4 racial harassment. Is there a safety violation in
5 there, in that statement?

6 A. It appears to be a threat. Yes.

7 Q. 1968, sir. At the very top, what we can
8 clearly see, it says, "Smells like nigger in," and
9 then the rest of it is not legible or clear.
10 "Smells like nigger," does that violate the EEO
11 policy of WGI?

12 A. Yes.

13 Q. And which policy would that be
14 specifically?

15 A. EEO anti-harassment in several ways.

16 Q. Okay. Would racial harassment be one of
17 those?

18 A. Yes.

19 Q. 1969, sir. Looking at this specifically,
20 that word is written over or at least attempted to
21 be covered up, but I believe it does say, "Niggers
22 are apes." Are you able to read that or make that
23 out? If not, please let me know.

24 A. I think I can see that word contained in

1 that.

2 Q. And would that violate the EEO policy of
3 racial discrimination at WGI?

4 A. Yes.

5 Q. Two more, sir. 1971, a lot of things in
6 there, but I'll just point you out to one that says,
7 "Kill all Muslims." Does that violate any EEO
8 policy of WGI?

9 A. Yes.

10 Q. Which policy is that, sir?

11 A. The EEO policies, anti-harassment,
12 discrimination, religious discrimination obviously
13 in this case, and it does appear to be a threat.

14 Q. 1972, specifically where it says, "Godwin,
15 fat nigger," does that violate the EEO policy of
16 WGI, sir?

17 A. Yes.

18 Q. Which policies would that be?

19 A. The EEO policies, the anti-harassment
20 policy, generally offensive.

21 Q. Sir, if you had the opportunity -- if you
22 had the opportunity to see these pictures or to have
23 known about them before the EEOC sent them to you,
24 you said roughly in 2004, would that have changed

1 your decision and would you have come on site to
2 visit?

3 MR. PATERNITI: Objection. Go ahead.

4 A. I would have -- I don't know that it would
5 have caused me to go on site. I would certainly
6 have begun to question the efficiency of the process
7 that we had set into motion to solve this.

8 I don't know that we would have been
9 tremendously more successful, but I would have
10 perhaps tried to explore some other ways, and what
11 are those, I'm not sure, because we were constrained
12 to begin with by the element of most of these --
13 some of them apparently did occur at stairwells --
14 most of these were occurring inside the
15 port-a-johns, and it's difficult to arrest someone
16 in the act when doing that.

17 But it's reprehensible. We would have done
18 everything reasonable that we could have done within
19 the constraints of reasonableness for us.

20 Q. You said at least since 2002, August of
21 2002, you had conversations with Mr. Anderson, who
22 was the EEO officer on site. Did he disclose the
23 specific nature and the content of the graffiti to
24 you as you've seen them here?

1 A. In some of several conversations or other
2 kinds of communication with him, there were brief
3 descriptions of some of that.

4 Q. Did he describe them -- how did he describe
5 them? Did he describe them as people were being
6 referred to as niggers?

7 A. I don't recall the exact detail.

8 Q. Do you know whether -- okay. If you don't
9 recall the exact details, what do you recall, if
10 anything at all? Were there racial epithets? Did
11 he describe anything as racial epithets, derogatory
12 racial offensive words being written about employees
13 of WGI?

14 A. I don't believe there was any doubt in my
15 mind that it was offensive material. And to its
16 exact content, I can't say specifically today,
17 although I do recall that in both Mr. Willis and Mr.
18 Enagbare, it was offensive personally to them, and I
19 do believe that my recollection of the facts that I
20 had say that it was racial in its nature.

21 Q. Have you ever yourself been charged or been
22 accused of racial discrimination in the course of
23 your employment with WGI?

24 A. None known.

1 Q. None known to you. Well, do you know of
2 any specifically? You don't know; is that what
3 you're saying?

4 A. That's right.

5 Q. Any racial discrimination or any other type
6 of discrimination with your previous -- with Rust or
7 Raytheon?

8 MR. PATERNITI: Objection. I don't
9 understand the question.

10 Q. Have you ever been charged with
11 discrimination of any kind while employed by Rust,
12 Raytheon -- you have already answered with respect
13 to WGI -- just with respect to those two companies?

14 A. No.

15 Q. Any discrimination charges against you with
16 respect to any -- in any form against you, whether
17 in your personal life?

18 A. None.

19 Q. Have you -- do you use the word "nigger"?

20 A. No.

21 MR. DESSIN: Thank you, sir.

22 REDIRECT EXAMINATION

23 BY MS. PALACIOS-BALDWIN:

24 Q. Mr. McDaniel, I have two follow-up

1 questions to Jacques', and I promise there are two.

2 He asked you some questions about images,
3 specific in this case, and asked for your response
4 as to whether or not you believed they were
5 discriminatory.

6 My first question is whether you consider
7 the display -- whether the actual flag or in an
8 image as a drawing -- of the Confederate flag in the
9 workplace as a violation of the WGI's policies on
10 EEO.

11 A. Yes.

12 Q. And the second question I have is, do you
13 have an opinion as to whether or not the display of
14 drawings of nooses or an actual noose on site is a
15 violation of the EEO policy at WGI?

16 A. Absolutely.

17 MR. PATERNITI: Is everybody done?

18 MR. BENNETT: Well, I had just one
19 follow-up question.

20 RECROSS EXAMINATION

21 BY MR. BENNETT:

22 Q. The follow-up is, if you had been made
23 aware that a Confederate flag was displayed on a WGI
24 employee -- for example, on his hard hat, for

1 example -- what, if any, type of corrective action,
2 in light of your opinion that it would be a
3 violation of the zero tolerance policy, in your
4 opinion should have been taken relative to that
5 display of the Confederate flag?

6 A. To request the individual to cease and
7 desist in such acts, and failure to do so would
8 result in punitive action up to and including
9 termination.

10 Q. Would you counsel the person on why the
11 Confederate flag would be inappropriate to display
12 at the work site?

13 A. Yes.

14 Q. What would you say?

15 A. That it has a history associated with it
16 that is indicative of discriminatory practices, and
17 that it is inciteful at times for certain
18 individuals and accentuates a racial connotation to
19 it, and I would ask them to stop displaying it.

20 Q. I assume you would -- is it fair to say you
21 would also tell the person that it is inappropriate
22 for display at the work site?

23 A. Yes.

24 MR. BENNETT: I don't have anything

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Carol H. Kusinitz, Registered Professional
4 Reporter and Notary Public in and for the
5 Commonwealth of Massachusetts, hereby certify that
6 there came before me on the 1st day of December,
7 2006, at 12:41 p.m., the person hereinbefore named,
8 who was by me duly sworn to testify to the truth and
9 nothing but the truth of his knowledge touching and
10 concerning the matters in controversy in this cause;
11 that he was thereupon examined upon his oath, and
12 his examination reduced to typewriting under my
13 direction; and that the deposition is a true record
14 of the testimony given by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 7th day of
21 December, 2006.

22 Carol H. Kusinitz

23 Notary Public

24 My commission expires 6/7/13